

AG/RES. 2052 (XXXIV-O/04)

PROMOTION OF AND RESPECT FOR INTERNATIONAL HUMANITARIAN LAW^{13/}

(Adopted at the fourth plenary session held on June 8, 2004)

THE GENERAL ASSEMBLY,

REAFFIRMING the principles and purposes of the Charter of the Organization of American States and the Charter of the United Nations;

RECALLING its resolutions AG/RES. 1270 (XXIV-O/94), AG/RES. 1335 (XXV-O/95), AG/RES. 1408 (XXVI-O/96), AG/RES. 1503 (XXVII-O/97), AG/RES. 1565 (XXVIII-O/98), AG/RES. 1619 (XXIX-O/99), AG/RES. 1706 (XXX-O/00), AG/RES. 1771 (XXXI-O/01), AG/RES. 1900 (XXXII-O/02), AG/RES. 1904 (XXXII-O/02), AG/RES. 1929 (XXXIII-O/03) and AG/RES. 1944 (XXXIII-O/03);

DEEPLY CONCERNED over persistent violations of international humanitarian law affecting the world's civilian populations, in particular children and women;

AWARE that the aim of international humanitarian law is the protection of the civilian population and all persons affected by armed conflict and that it also establishes that the right of parties in armed conflict to choose the methods and means of war is not unlimited;

TAKING INTO ACCOUNT the commitments made by the international community contained in the Declaration and Agenda for Humanitarian Action of the 28th International Conference of the Red Cross and Red Crescent, held in Geneva, December 2-6, 2003;

REAFFIRMING the importance of establishing measures to strengthen the role of the OAS in disseminating and promoting the application of international humanitarian law in the region;

RECALLING that it is the obligation of all states to respect and ensure respect, in all circumstances, the 1949 Geneva Conventions and, for the states that are parties thereto, the provisions contained in the 1977 Additional Protocols to those conventions, as well as the provisions and general principles established in international humanitarian law;

REITERATING the need for states to adopt legislative, administrative, educational, and practical measures for the application, at the national level, of international humanitarian law;

RECOGNIZING the important part played by the national committees or commissions established in numerous countries for the dissemination and application of international humanitarian law in ensuring that the Geneva Conventions and, where

applicable, the Additional Protocols thereto, as well as the other instruments of international humanitarian law, are incorporated into the domestic law of states parties to those instruments, so as to ensure proper compliance with and dissemination of those instruments;

AWARE of the need to prevent impunity and to bring to justice those responsible for war crimes, crimes against humanity, and other grave breaches of international humanitarian law;

RECALLING that the Rome Statute of the International Criminal Court defines war crimes and crimes against humanity that its states parties commit to punishing;

NOTING the growing number of ratifications of the Statute of the International Criminal Court;

EXPRESSING ITS SATISFACTION with the adoption of United Nations Security Council resolution S/RES/1502 (2003), which urges all those concerned, as set forth in international humanitarian law, to allow full unimpeded access by humanitarian personnel to all people in need of assistance;

EXPRESSING ALSO ITS SATISFACTION with the Meeting of National Committees on International Humanitarian Law in the Americas, held in Antigua, Guatemala, August 27-29, 2003;

NOTING the Regional Meeting of Legal Advisers of the Armed Forces, held in Lima, Peru, on April 28 and 29, 2004;

CONCERNED over the disappearance of persons and the taking of hostages, particularly during armed conflict, and the suffering this causes to families and loved ones during and after the conflict;

UNDERSCORING the need to protect cultural property from the effects of armed conflicts;

TAKING NOTE of the adoption of a new protocol on explosive remnants of war by the states parties to the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;

UNDERSCORING ONCE MORE the ongoing efforts of the International Committee of the Red Cross (ICRC) to promote and disseminate knowledge of international humanitarian law and the activities it carries out as an organization that is impartial, neutral, and independent under any and all circumstances; and

EXPRESSING ITS SATISFACTION with the special meeting of the Committee on Juridical and Political Affairs on promotion of and respect for international

humanitarian law, held on March 25, 2004, at the headquarters of the Organization, with the participation of Dr. Luis Moreno Ocampo, Prosecutor of the International Criminal Court,

RESOLVES:

1. To urge the member states and all parties engaged in an armed conflict to honor their obligations under international humanitarian law, especially those that refer to protection of the civilian population and the treatment of prisoners of war.

2. To urge all member states of the Organization that have not yet done so to consider becoming parties to the following treaties:

- a) The 1977 Additional Protocols I and II to the 1949 Geneva Conventions; and that they consider making the declaration contemplated in Article 90 of Protocol I;
- b) The 1998 Rome Statute of the International Criminal Court;
- c) The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on Their Destruction;
- d) The 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, including the amendment to its Article I adopted in 2001 and its five protocols;
- e) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its 1954 Protocol, and its 1999 Second Protocol, on enhanced protection;
- f) The 1989 Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict, which includes their participation in hostilities and their recruitment into armed forces and armed groups;
- g) The 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA); and
- h) The 1994 Convention on the Safety of United Nations and Associated Personnel.

3. To exhort the member states to respect and ensure respect the basic provisions of international humanitarian law set forth in Article 3 common to the Geneva Conventions, and to call upon the parties in conflict to apply, as a minimum, those provisions in the event of armed conflict that is not of an international nature.

4. To urge member states to consider adopting the appropriate measures, at the national level, to address the grave humanitarian consequences of the unregulated availability of arms, including the enactment of domestic laws aimed at strengthening control over the manufacturing of and illicit trafficking in firearms, ammunition, and other related materials, and to bear in mind the Programme of Action adopted at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (New York, July 9-20, 2001).

5. To urge states, in accordance with international legal obligations they have assumed, to pay special attention both in times of peace and in times of armed conflict to the obligation, in the study, development, acquisition, or adoption of new weapons or new means or methods of warfare, to determine whether their use would be contrary to international humanitarian law, and, in that event, neither to adopt it for use by the armed forces nor to manufacture it for such purposes.

6. To call upon the member states to implement mechanisms to follow up on family reunification programs and search programs for persons reported as missing in circumstances of armed conflicts or other situations of violence.

7. To urge member states to apply the necessary measures to protect cultural property from the effects of armed conflicts, such as the identification, registration, or distinctive marking of such property.

8. To urge member states to consider establishing, if they have not yet done so, national committees or commissions on international humanitarian law to ensure effective coordination and the applicability of measures to prevent, disseminate, and apply international humanitarian law, with the support of the International Committee of the Red Cross.

9. To urge the member states, and all those concerned, as set forth in international humanitarian law, to allow full unimpeded access by humanitarian personnel to all people in need of assistance in keeping with United Nations Security Council resolution S/RES/1502 (2003).

10. To invite the states parties to the Rome Statute to define in their criminal legislation, in addition to crimes that must be repressed under other international humanitarian law treaties, those set forth in the Statute, and to adopt all measures necessary to cooperate effectively with the International Criminal Court.

11. To urge member states to adopt the necessary measures to implement, at the national level, the provisions contained in the instruments of

international humanitarian law to which they are party; to enlist, if necessary, the technical assistance of the ICRC; and to bring about the widest possible dissemination of international humanitarian law throughout the population, particularly among the armed forces and security forces, by including it in military doctrine and manuals, and official instruction programs.

12. To call upon the member states to consider promoting and applying the Agenda for Humanitarian Action adopted at the 28th International Conference of the Red Cross and Red Crescent.

13. To invite member states to contribute to the quest for solutions to the humanitarian problem associated with the use of mines other than antipersonnel mines.

14. To request the General Secretariat to continue to organize, through the Secretariat for Legal Affairs and in coordination with the ICRC, governmental conferences to disseminate and reinforce the implementation of international humanitarian law and related inter-American conventions.

15. To instruct the Permanent Council to continue to organize, with support from the General Secretariat and in cooperation with the ICRC, special meetings on topical issues in the area of international humanitarian law.

16. To instruct the Permanent Council to present a report to the General Assembly at its thirty-fifth regular session on the implementation of this resolution.

ANNEX

STATEMENT BY THE DELEGATION OF THE UNITED STATES

The United States has long been concerned about the persistent violations of international humanitarian law and international human rights law throughout the world. We stand for justice and the promotion of the rule of law. The United States will continue to be a forceful advocate for the principle of accountability for war crimes, genocide and crimes against humanity, but we cannot support the seriously flawed International Criminal Court. Our position is that states are primarily responsible for ensuring justice in the international system. We believe that the best way to combat these serious offenses is to build and strengthen domestic judicial systems and political will and, in appropriate circumstances, work through the United Nations Security Council to establish ad hoc tribunals as in Yugoslavia and Rwanda. Our position is that international practice should promote domestic accountability. The United States has concluded that the International Criminal Court does not advance these principles.

The United States has not ratified the Rome Statute and has no intention of doing so. This is because we have strong objections to the International Criminal Court, which we believe is fundamentally flawed. The International Criminal Court claims jurisdiction over the nationals of states not party to the agreement. It has the potential to undermine the role of the United Nations Security Council in maintaining international peace and security. We also object to the Court because it is not subject to adequate checks and balances. We believe that an independent court with unchecked power is open to abuse and exploitation. Its structure lends itself to the great danger of politically-motivated prosecutions and decisions. The inclusion of the still-undefined crime of aggression within the statute of the Court creates the potential for conflict with the United Nations Charter, which provides that the Security Council determines when an act of aggression has occurred.

The United States notes that in past decades several member states have reached national consensus for addressing historic conflicts and controversies as part of their successful and peaceful transition from authoritarian rule to representative democracy. Indeed, some of those sovereign governments, in light of new events, evolved public opinion, or stronger democratic institutions, have decided on their own and at a time of their choosing to reopen past controversies. These experiences provide compelling support for the argument that member states—particularly those with functioning democratic institutions and independent functioning judicial systems—should retain the sovereign discretion to decide as a result of democratic and legal processes whether to prosecute or to seek national reconciliation by other peaceful and effective means. The United States is concerned that the International Criminal Court has the potential to undermine the legitimate efforts of member states to achieve national reconciliation and domestic accountability by democratic means.

Our policy on the ICC is consistent with the history of our policies on human rights, the rule of law and the validity of democratic institutions. For example, we have been a major proponent of the Special Court for Sierra Leone because it is grounded in sovereign consent, combines domestic and international participation in a manner that will generate a lasting benefit to the rule of law within Sierra Leone, and interfaces with the Truth and Reconciliation Commission to address accountability.

The United States has a unique role and responsibility to help preserve international peace and security. At any given time, U.S. forces are located in close to 100 nations around the world, for example, conducting peacekeeping and humanitarian operations and fighting inhumanity. We must ensure that our soldiers and government officials are not exposed to the prospect of politicized prosecutions and investigations. Our country is committed to a robust engagement in the world to defend freedom and defeat terror; we cannot permit the ICC to disrupt that vital mission.

In light of this position, the United States cannot in good faith join in the consensus on an OAS resolution that promotes the Court.

Furthermore, the United States has not acceded to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction, or the “Ottawa Convention,” and does not intend to do so. In light of this position, the United States cannot in good faith join in the consensus on an OAS resolution that promotes the Ottawa Convention.

^[1] The United States reserves on paragraphs 2.b, 2.c and 10 of this resolution and requests that the text of its statement be placed on record. The text of the statement appears as an annex to this resolution.